

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

SUPERTRANSPORT, LLC

PLAINTIFF

VS.

CIVIL ACTION NO.: 1:22-cv-161-GHD-DAS

ALL AMERICAN TRUCK & TRAILER REPAIR, LLC
and GREG FOWLER

DEFENDANTS

MOTION TO SET ASIDE CLERK'S ENTRY OF DEFAULT

COME NOW the defendants, All American Truck & Trailer Repair, LLC, and Greg Fowler, by and through counsel, and file this Motion to Set Aside Clerk's Entry of Default [12, 13], and in support thereof would say and show unto the Court as follows:

I.

That on January 11, 2023, this Honorable Court entered an order directing that the defendant, All American Truck & Trailer Repair, LLC, had 21 days to obtain counsel or face an entry of default. At the conclusion of the 21 day period, having heard nothing from neither defendant, the clerk docketed an entry of default against each defendant. [12, 13].

II.

In defendants' Response to Plaintiff's Motion to Strike Defendants' Responses to Motion for Default Judgment [24], defendants rely on their assertion: that settlement negotiations were ongoing; that a settlement had been reached with the Plaintiff; that assurances were given to the defendants that the plaintiff was not moving forward with the federal lawsuit filed herein; and that it would be dismissed as more particularly set forth in ¶¶ 11-X of said Response as follows:

"II. In ¶ 15 of Plaintiff's Response to Show Cause Order, Plaintiff states that, 'Plaintiff's counsel was forthcoming regarding Plaintiff's deliberation to proceed on damages.' In accordance with the foregoing, Plaintiff readily admits that Plaintiff is in settlement negotiations with the Defendants and therefore waives any argument regarding admissibility as to those settlement

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negotiations.

III. The negotiations involved the services and parts or goods relating to the repairs made to two trucks, a red Freightliner Classic and a white International. This settlement contract is admissible in accordance with Miss. Code Ann. §75-2-201(3)(b) Uniform Commercial Code which states in part, '[I]f the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract ... was made, said contract does not have to be in writing'.

IV. In the context of the current status of the litigation, although Plaintiff may argue that said statement is hearsay and therefore inadmissible, the statements made by the Plaintiff are admissible under Fed. R. Evid. 801(d)(1) declarant-witness's prior statement; Fed. R. Evid. 801(d)(2) as to an opposing party's statement; and is also admissible under Fed. R. Evid. 807, the residual exception to the hearsay rule.

V. The Defendants were in settlement negotiations with "Mark", the owner of the Plaintiff company. Settlement consisted of the following set of facts:

- a] Defendants had completed work, to Plaintiff's satisfaction, on a red Freightliner Classic truck which consisted of parts and labor totaling \$6,112.00; and
- b] Defendants were given another truck – a white International – which was being worked on for fuel issues.

VI. Plaintiff came to pick up the red Freightliner Classic and Defendants asked for payment. Plaintiff refused to pay the \$6,112.00 arguing that the work on the white International truck had to be completed.

VII. It was determined that the white International needed a fuel pump which cost approximately \$6,000.00 and Plaintiff refused to purchase the fuel pump so that the truck could be repaired.

VIII. A lawsuit was filed after which the Plaintiff and the Defendants agreed to settle this matter and the federal court case be dismissed if the Defendants would release the white International truck – which Defendants agreed to do. See Affidavit of Thomas Fowler on behalf of All American Truck & Trailer Repair, LLC attached as Exhibit 1 and Affidavit of Greg Fowler attached as Exhibit 2.

IX. Defendants did not hear back from Plaintiff and concluded that this matter had been dismissed. Defendants detrimentally relied on the representation of Plaintiff that this matter would be dismissed if the white International truck was returned.

X. Good and valuable consideration was paid in exchange for settlement in that the \$6,112.00 repair bill remained unpaid as it related to the red Freightliner Classic. See repair bill attached as Exhibit 3. There also remained a \$5,198.00 repair bill regarding work completed on the white International truck. See repair bill attached as Exhibit 4. Accordingly, \$11,310.00 in consideration was paid to complete this settlement agreement."

WHEREFORE, PREMISES CONSIDERED, defendants would request that the clerk's entries of default [12, 13] be set aside.

RESPECTFULLY SUBMITTED, this 3rd day of October, 2023.


KENNETH E. FLOYD, II MSB 99985
Attorney for Defendants

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CERTIFICATE OF SERVICE

I, Kenneth E. Floyd, II, attorney for the Defendants, do hereby certify that on this day I electronically filed defendants' Motion to Set Aside Clerk's Entry of Default with the Court using the MEC system which sent notification of such filing to all counsel of record registered in the system.

I further certify that I have mailed by United States Postal Service the foregoing document to all non-MEC participants: None.

THIS 3rd day of October, 2023.



KENNETH E. FLOYD, II

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NORTHERN DISTRICT OF MISSISSIPPI

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VS.

CIVIL ACTION NO.: 1:22-cv-161-GHD-DAS

ALL AMERICAN TRUCK & TRAILER REPAIR, LLC
and GREG FOWLER

DEFENDANTS

AFFIDAVIT OF THOMAS FOWLER

State of Mississippi § County of Prentiss

I, THOMAS FOWLER, hereby state under oath that the matters and things alleged and stated in the Motion to Set Aside Clerk's Entry of Default are true, correct, and exact as therein stated.

THIS the 3rd day of OCT ~~August~~, 2023.

THOMAS FOWLER

SWORN TO and subscribed before me, this 3rd day of OCT 2023.

NOTARY PUBLIC

My Commission Expires:

March 30, 2027



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ALL AMERICAN TRUCK & TRAILER REPAIR, LLC
and GREG FOWLER

DEFENDANTS

AFFIDAVIT OF GREG FOWLER

State of Mississippi § County of Prentiss


I, GREG FOWLER, hereby state under oath that the matters and things alleged and stated in the Motion to Set Aside Clerk's Entry of Default are true, correct, and exact as therein stated.

THIS the 3rd day of October, 2023.



GREG FOWLER

SWORN TO and subscribed before me, this 3rd day of October, 2023.



NOTARY PUBLIC

My Commission Expires:

March 30, 2027

